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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re
Round Table Pizza Inc.,
Debtor.

Case Nos. 11-41431 RLE
11-41432 RLE
11-41433 RLE
11-41434 RLE

Chapter 11

In re
Round Table Development Co.,
Debtor.

**DECLARATION OF J. ROBERT
McCOURT IN SUPPORT OF FIRST DAY
MOTIONS**

Judge: Hon. Roger Efremsky
Date: February 11, 2011
Time: 10:30 a.m.
Place: United States Bankruptcy Court
1300 Clay Street
Oakland, California

In re
The Round Table Franchise Corp.,
Debtor.

In re
Round Table Pizza Nevada, LLC,
Debtor.

1 I, J. Robert McCourt, declare as follows:

2 1. I am the President and Chief Executive Officer of Round Table Pizza, Inc., Round
3 Table Franchise Corporation, Round Table Development Company, and Round Table Pizza of
4 Nevada, LLC, (collectively, "Round Table"). As discussed below, all of these entities have been
5 operated as a single unitary business.

6 2. I have been a member of Round Table's management team since 1996. I make
7 this Declaration of my personal knowledge and based on my review of Round Table's books and
8 records and inquiries of Round Table's management and employees. I could and would
9 competently testify as follows:

10 **I. BACKGROUND**

11 3. Round Table's first restaurant opened in Menlo Park, California in 1959. Over the
12 past 50 years, Round Table has grown to dominate the Northern California market for pizza, to
13 become a major West Coast chain, with nearly 500 stores in seven States, and to engage in
14 international development.

15 4. During the same period, Round Table diversified from acting exclusively as a
16 franchisor to also operating company owned stores, ultimately acquiring and developing 140
17 company-owned stores and swelling its employee base from 70 to a peak of over 3,000
18 employees.

19 5. During the decade prior to the Great Recession, Round Table enjoyed tremendous
20 growth. Between 1997 and 2006, revenues grew from \$16 million to \$120 million per year, and
21 operating profits grew from \$4.3 million to \$10.5 million.

22 6. Having enjoyed consistent profitable expansion over the preceding decade, Round
23 Table sought a new credit facility that would support further expansion, including a planned
24 acquisition of more than 35 stores. In February of 2007, Round Table closed a \$65 million credit
25 facility jointly provided by General Electric Capital Corporation and The Prudential Insurance
26 Company of America (collectively, "GECC / Prudential"), providing it with the ability to fund
27 further expansion.
28

II. THE GREAT RECESSION

1
2 7. Round Table's management was sensitive to the economic environment, especially
3 regarding employment, since there is an extremely close relationship between employment levels
4 and Round Table's unit sales. *See* Exhibit A. Round Table's management responded promptly to
5 increases in unemployment in mid-2007 and the onset of the Great Recession. In late 2007,
6 management halted the growth which had driven the company for the preceding decade, shelving
7 the plans to acquire more than 35 stores and ultimately terminating all efforts to acquire or develop
8 new company stores.

9 8. As the Great Recession continued, the company focused on reducing expenses.
10 General administrative and overhead expenses were reduced from \$12.2 million dollars in 2006 to
11 \$6 million dollars in 2009, while Round Table increased market share by 4% during the same
12 period. Round Table's management addressed the profitability and performance of the company
13 stores by closing under-performing stores as leases expired, seeking concessions from landlords
14 and selling some of the stores to franchisees. Round Table's management also reduced costs
15 above the company store level, ultimately engaging in 5 rounds of lay-offs and severing a total of
16 54 employees.

17 9. Management led the cost reductions. Corporate employees and senior management
18 received no merit increases in 2007, 2009 and 2010, and only a 2.6% increase in 2008.
19 Historically, corporate employees had received low salaries counterbalanced by high bonuses, but
20 only a nominal bonus (\$125,000 among 85 employees) was paid in 2007, and no bonuses were
21 earned or paid in 2008, 2009 and 2010. Management also forfeited more than \$500,000 in earned
22 compensation and vacation pay to improve the company's performance.

23 10. In addition, in response to the Great Recession, senior management deferred almost
24 \$2 million dollars in compensation, compensation which had been earned by exceeding
25 performance targets in 2005 and 2006 but was first payable in 2008. Although ample funding was
26 available to pay that compensation at the time, management deferred the compensation because it
27 recognized that the cash would be useful to the company in weathering the approaching storm.
28

III. OWNERSHIP AND VALUE

11. Round Table has been largely owned by an Employee Stock Ownership Plan (the “ESOP”) for much of its history, and solely owned by the ESOP for more than a decade. The ESOP is designed and intended to provide a source of retirement income to Round Table’s loyal, long-term employees. There are currently 3,190 participants in the ESOP. Round Table’s management is committed to maximizing the recovery to its employees through the ESOP.

12. Round Table is required to provide the ESOP with liquidity with which it can make distributions, based on the company’s share price, as determined by an independent appraiser, based on market data and market comparisons. As of December 31, 2009, Round Table was valued by the independent appraiser at \$45 million. I believe that value to be fair and reasonable, and consistent with the market, including my recent experience in attempting to sell the company, discussed below.

13. Although Round Table has supported and promoted the ESOP, in certain respects, ESOP ownership has exacerbated Round Table’s financial stress. The ESOP and applicable law establishes specified monetary contributions that the company must make to the ESOP each year; additionally, Round Table committed to set levels of voluntary contributions which were only reduced in response to the pressures of the Great Recession.

14. Round Table’s contributions to the ESOP since 2004 have exceeded \$11 million.

15. In addition, the company’s obligation to provide the ESOP with liquidity to make distributions to participants based on the company’s value exacerbates demands on Round Table’s cash.

16. Ordinarily, much of the annual contribution is payable at the end of the succeeding year. Round Table failed timely to pay, at the urging of its Lenders, contributions due December 31, 2010, aggregating \$826,000. Including 2010 obligations, which are due in 2011, Round Table currently owes about \$1.44 million to the ESOP.

IV. EXTRANEOUS EVENTS

17. In the midst of the Great Recession, Round Table was required to address and resolve two wage and hour class action lawsuits. Aggregate costs associated with this litigation exceeded \$4.3 million, imposing additional strains on the company's liquidity. Unpaid obligations under the class action settlements currently aggregate about \$380,000.

18. In 2010, the pizza market became extremely price competitive as a result of the Great Recession. Round Table could not materially reduce the cost of its ingredients, since it had established its reputation as "the last honest pizza." The lower margins during this period put additional stress on Round Table's profitability.

V. THE GECC / PRUDENTIAL CREDIT FACILITY

19. The credit facility provided for borrowings of up to \$65 million dollars. \$21 million was drawn down at the outset to retire existing secured debt. Additional funds were drawn to pay for company stores to which Round Table had committed before the onset of the Great Recession time. Finally, \$1.5 million was drawn down in June of 2010 to provide Round Table with liquidity.

20. Since inception in March of 2007, Round Table has repaid more than \$9.7 million in principal, and has paid interest and fees aggregating more than \$8.2 million. Currently, the aggregate outstanding indebtedness on the credit facility is approximately \$30 million dollars.

21. The credit facility imposes a floating interest rate, originally set at 3.25% over LIBOR. At inception, the Lenders insisted that Round Table hedge its potential exposure to an increase in the LIBOR rate by obtaining an interest rate hedge contract from Rabo Capital. The LIBOR rate dropped substantially during the intervening period (from more than 5% to less than 0.3%), rendering the Rabo Capital hedge contract pointless. For the last quarter of 2010, the obligation to Rabo Capital on the interest rate hedge contract was \$260,000; since inception, Round Table has paid Rabo Capital more than \$2.55 million on account of the interest rate hedge contract.

1 22. The credit facility contemplated a high and escalating level of principal repayment:
2 nearly \$1.6 million in 2010, twice that in 2011 and treble that in 2012. At the time the schedule
3 was negotiated, Round Table had been enjoying a decade of substantial and uninterrupted growth
4 and was expecting imminently to acquire 35 company stores and to build an additional 65
5 company stores, and projected 2010 revenue in excess of \$210 million. Projecting the future on
6 the basis of past experience and then-current plans for growth, the negotiated rates of principal
7 repayment seemed reasonable.

8 23. Unfortunately, the Great Recession followed shortly after the inception of the credit
9 facility, plans for growth were shelved, and actual 2010 revenue was only \$112 million. As a
10 consequence, the contract rates of principal repayment were not achievable. Round Table sought
11 to negotiate modifications of its obligations under the credit facility that would permit ongoing
12 performance in this changed economic environment, but was entirely unsuccessful.

13 24. Instead, through an August 31, 2010 Amendment, GECC / Prudential increased the
14 interest rate, and thereafter required a shift in the base rate from LIBOR to prime. Interest on the
15 facility now accrues at 6.8% over prime, or currently 10.05%. (By contrast, interest at the rate
16 originally contemplated by the credit facility, 3.25% over LIBOR, would amount to 3.51%.)
17 Including the charge on the Rabo Capital hedge contract, the aggregate effective interest rate
18 imposed on Round Table by the credit facility is now 13.59%. I believe a market interest rate
19 would amount to 6.5% to 7%.

20
21 **VI. EFFORTS TO SELL THE COMPANY**

22 25. Recognizing that the operations of the chain following the Great Recession could
23 not support the principal repayment schedule in the GECC / Prudential credit facility, Round
24 Table's management concluded that the chain should be sold in order to retire the debt.

25 26. In June of 2010, Round Table retained North Point Advisors as its investment
26 banker, and began efforts to sell the company. Through North Point, 117 potential buyers were
27 contacted, of which 54 executed non-disclosure agreements and received due diligence materials.
28

1 The company received 17 proposals (written and verbal) and proceeded to serious negotiations
2 with the most favorable.

3 27. Round Table engaged in serious negotiations with two potential acquirers at values
4 which would permit it to pay all creditors and fund a return to the ESOP which owns all of its
5 equity. GECC / Prudential were actively involved in the sales process, requiring regular reports
6 and follow up information, and engaging in direct discussions and negotiations with those
7 potential acquirers. Ultimately, GECC / Prudential refused to provide financing for any portion of
8 the purchase price, resulting in the potential acquirers withdrawing.

9 28. Recently, Round Table received a contingent opportunistic offer which, if
10 ultimately consummated, might have yielded at most partial payment to unsecured creditors.
11 Believing that its value was materially in excess of its debts, consistent with the recent ESOP
12 appraised value of \$45 million, Round Table concluded that the interests of creditors and the
13 ESOP were better served by a Chapter 11 reorganization.

14 **VII. INTENDED BUSINESS REORGANIZATION**

15
16 29. There are two core aspects to Round Table's business: a franchisor to independent
17 third party owner-operators, and operating company-owned stores.

18 30. There are currently 355 franchised stores, with 148 franchisees. The franchise base
19 is highly diversified: 91% of the franchisees own 5 stores or less, and only two franchisees own 20
20 to 25 stores. Management believes that the franchise segment of Round Table's business is sound,
21 produces stable profits and does not require material reorganization.

22 31. Round Table operates 128 company-owned stores. Although most of them are
23 profitable, a number of the stores have been unable to operate profitably in the current economic
24 environment, generating significant losses. Over the first 4 to 6 months of its Chapter 11 case,
25 Round Table intends to close unprofitable stores and to renegotiate leases with respect to its
26 marginal stores. Within 4 to 6 months, Round Table expects that its remaining base of company-
27 owned stores will be stable and profitable.

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1 32. Round Table expects to have maximized the value of the chain, through store
2 closings and lease renegotiations, by the conclusion of the initial phase of its reorganization.

3
4 **VII. FINANCIAL REORGANIZATION**

5 33. After the initial phase of its reorganization has concluded, Round Table intends to
6 complete its reorganization by embarking on one of two paths.

7 34. If it appears that an appropriate value can be realized for the benefit of all of its
8 constituencies through a sale, Round Table is amenable to engaging in that process.

9 35. On the other hand, if problems in the economy and the credit industry make it
10 impossible to realize an appropriate value for the company this year, Round Table will propose a
11 Plan of Reorganization which restructures its debt so that it can operate successfully for a period
12 of perhaps five years, by the conclusion of which it would expect to sell the business or refinance
13 the debt.

14 **VIII. MOTION FOR JOINT ADMINISTRATION**

15 36. Formally, Round Table consists of 4 separate entities: Round Table Pizza, Inc., the
16 parent corporation, and two subsidiaries, Round Table Franchise Corporation, which operates the
17 franchise business, and Round Table Development Company, which operates the company-owned
18 stores; and Round Table Pizza of Nevada, LLC, which is wholly owned by Round Table
19 Development Company.

20 37. As a practical matter, Round Table has always operated and presented itself as a
21 single, unitary business.

22 a. Creditors have consistently been provided only consolidated financial
23 statements.

24 b. The Lenders receive monthly financial reports, prepared only on a
25 consolidated basis.

26 c. All internal financial statements are prepared on a consolidated basis.
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1 d. All cash is swept to a single account held by the parent corporation, and all
2 disbursements are made from the parent's accounts.

3 e. All three corporations file tax returns as a consolidated group. As a single-
4 member LLC, Round Table Pizza of Nevada, LLC is not treated as a separate taxable entity for
5 federal tax purposes.

6 f. Separate financial statements are not prepared for Round Table
7 Development Company or Round Table Pizza of Nevada, LLC.

8 g. As a result of FTC requirements, the company is obligated to prepare and
9 submit to the FTC annual financial statements for Round Table Franchise Corporation, but those
10 financial statements are not otherwise provided to creditors. Those statements are not provided to
11 creditors, however, and include the following Note:

12 Transactions with Parent and Affiliates

13 Substantially all of the Company's cash receipts and disbursements are
14 managed by the Parent. Under this arrangement, all cash receipts for the
15 franchise fees are transferred to the Parent and all Company expenses are
funded by the Parent.

16 38. Although Round Table maintains bookkeeping information so that separate
17 financial statements can be prepared for each entity, Round Table itself only prepares financial
18 statements on a consolidated basis. Round Table's accountants perform an annual audit and
19 prepare separate financial statements for the FTC for Round Table Franchise Corporation.
20 Separate financial statements for Round Table Development Corporation and Round Table Pizza
21 of Nevada, LLC ordinarily are not prepared at all.

22 39. It would be extremely burdensome and expensive for Round Table to attempt to
23 prepare financial statements internally on a current, non-consolidated basis for the first time post-
24 bankruptcy. Round Table therefore requests that it be permitted to continue to prepare all periodic
25 reports, including Monthly Operating Reports, on a consolidated basis pending further Order of
26 the Court.

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1 45. In addition, the Rabo Capital Hedge Contract provides that the filing of a
2 bankruptcy petition by Round Table constitutes an event giving rise to Early Termination of the
3 Rabo Capital Hedge Contract.

4 46. I believe that it would be in the best interests of Round Table's creditors and its
5 estate to reject the Rabo Capital Hedge Contract, effect as of the Petition Date.

6
7 **XI. PRE-PETITION WAGES AND BENEFITS**

8 47. Round Table's employees (the "Employees") fall into three broad categories.

9 a. First and most numerous are the 2,581 employees who work in the 128
10 company-owned stores ("Store Employees"). This group consists exclusively of hourly rate
11 employees. Consistent with industry practice, these employees are paid bi-weekly, with a 5 day
12 lag. Their last pre-petition payroll was disbursed on February 4, 2011, covering wages earned
13 through January 30, 2011.

14 b. Second, Round Table has 21 employees engaged in the management of
15 multiple company stores as district managers and regional managers ("Field Managers").
16 Consistent with industry practice, these employees are paid bi-weekly, with a 5 day lag. Their last
17 pre-petition payroll was disbursed on February 4, 2011, covering wages earned through January
18 30, 2011.

19 c. Finally, Round Table employs 43 individuals at its headquarters in
20 Concord, California as staff and managers ("Corporate Staff"). All Corporate Staff are paid bi-
21 monthly. Their last pre-petition payroll was disbursed on January 31, 2011, covering wages
22 earned through January 31, 2011.

23 48. In addition, Round Table has a bonus program for exceptional performance by
24 Store and Field Employees. The bonus for performance in the fourth quarter of 2010 is currently
25 due, in the aggregate amount of \$41,081 for approximately 60 employees. Since the bonus relates
26 to services performed in the final quarter of 2010, we have viewed it as pre-petition wages.

1 49. The next payroll for Store Employees and Field Managers will be distributed on
2 February 18, 2011 and will cover wages earned during the period from January 31, 2011 through
3 February 13, 2011 and will therefore include approximately 9 days of pre-petition wages. The
4 next payroll for Corporate Staff will be distributed on February 15, 2011 and will cover wages
5 earned during the first 15 days of February and will therefore include approximately 8 days of pre-
6 petition wages.

7 50. The Store Employees, Field Managers and Corporate Staff are essential to Round
8 Table's operations and prospects for success. If any significant numbers of the Employees
9 become disaffected, it could seriously jeopardize Round Table's prospects for a successful
10 reorganization.

11 51. All of these Employees live very close to their paychecks, and all would find any
12 disruption or delay in payment an extreme hardship. I think it critical that the Employee's receive
13 their pay on time and in full, notwithstanding the bankruptcy filing. Round Table therefore seeks
14 to honor the employment contracts post-petition and intends to assume them under any Plan of
15 Reorganization, except with respect to store closings discussed below.

16 52. I have caused the pay, bonus, sick leave and vacation leave entitlements of the
17 Employees to be compared to the \$11,725 priority claim amount. In the case of only 34
18 Employees does the combination of accrued but unpaid wages as of the Petition Date and earned
19 sick leave and vacation leave exceed that \$11,725 amount (the "Over Priority Employees").

20 53. As noted, the company was recently valued at \$45 million by independent
21 appraisers, reflecting a value of \$15 million in excess of secured debts and a value substantially in
22 excess of the amount of all creditor claims. Under any set of circumstances, I think it is clear that
23 all priority claims will inevitably be paid in full.

24 54. I think it important that Round Table timely fund the full amount of its current
25 payroll, including bonuses to the Store and Field Employees for fourth quarter 2010 performance.
26 Among the Over Priority Employees, none will have accrued but unpaid wages as of the Petition
27 Date in excess of \$11,725. I therefore believe that Round Table should be authorized to fund the
28

1 full amount of its ordinary February 18, 2011 payroll to Store Employees and Field Employees
2 and its February 15, 2011 payroll to Corporate Staff.

3 55. Second, I think it important that Round Table honor its employee benefit
4 obligations to the fullest extent permissible. If Round Table is permitted to honor benefit
5 obligations up to an aggregate of \$11,725 (less the amount of any paid pre-petition wages), that
6 will allow all Under Priority Employees, aggregating 2,611 persons, to enjoy full benefits and will
7 allow the Over Priority Employees to enjoy the bulk of their benefits. I believe that this will be a
8 significant factor in sustaining employee morale and loyalty in the face of this bankruptcy filing.

9 56. I also believe it important that the Employees, other than the Over Priority
10 Employees, be excluded from the master mailing list and Schedule E. These are individuals of
11 limited means who are entirely dependent upon receiving their pay on a regular and predictable
12 basis. Receiving periodic notices about developments in their employer's bankruptcy case may
13 unnecessarily frighten the Employees and lead them to consider changing jobs, to the substantial
14 detriment of Round Table.

15 57. On the other hand, no purpose would be served by providing the Employees with
16 notice of developments in the bankruptcy case, if Round Table is authorized to perform on their
17 employment agreements on a current basis post-petition, and if those agreements are ultimately
18 reinstated under a Plan of Reorganization. If the case proceeds as anticipated, the employees will
19 be unimpaired by the bankruptcy process and have no need to participate in it.

20 58. Finally, there is substantial burden and expense associated with giving periodic
21 notices to more than 2,500 persons. If those persons will be entirely unaffected by the bankruptcy
22 process, that burden and expense should be avoided.

23 59. I also think that Round Table should be authorized to pay any pre-petition payroll
24 checks that are presented post-petition. Bouncing payroll checks would have a devastating effect
25 on morale. In addition, with only a few exceptions among the Over Priority Employees, honoring
26 a pre-petition payroll check and accrued but unpaid wages as of the Petition Date would not
27 exceed the \$11,725 priority amount. I have caused those Over Priority Employees' pay to be
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1 analyzed, and they do not have uncashed payroll checks. Of course, if any Employee did not cash
2 a payroll check pre-petition and cashes it post-petition, that may require restrictions on the
3 enjoyment of benefits so as to ensure that the Employee does not receive more than the priority
4 amount. I have caused Round Table to put procedures in place to ensure that benefits are
5 reviewed with respect to any Employee who cashes a payroll check post-petition.

6 60. Of course, it is important that the employees are made aware of the bankruptcy
7 filing, and Round Table has developed a communication plan to inform all employees. In the
8 event that the Wage and Benefits Motion is approved, Round Table intends immediately to
9 distribute to all affected employees the communication attached as Exhibit C, which also explains
10 the potential limitation on the use of benefits.

11 61. As noted, Round Table intends to close unprofitable company-owned stores and the
12 marginal stores which cannot be restructured so as to be profitable. Upon setting a date for any
13 store closing, Round Table proposes to give the employees at that store additional notice of the
14 bankruptcy filing and the availability of the bankruptcy claim process, and requests that any claim
15 filed by an employee within 100 days following the store closing be deemed timely. That said,
16 even in the event of store closings, I expect to seek permission to pay all employees in full prior to
17 their discharge.

18 **XII. UTILITIES**

19 62. Attached as Exhibit D is a schedule identifying the amounts of all utility billings
20 over the past 12 months. (This schedule is an internal company document and does not represent
21 an attempt to determine who is a “utility” for bankruptcy purposes – some of the entities on the
22 schedule may not be “utilities” for bankruptcy purposes.

23 63. Round Table believes that the respective utilities – if they are utilities entitled to
24 deposits – will be adequately protected by receiving a post-petition deposit equal to the average
25 utility billing in the preceding 12 months, as specified in the Exhibit.

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XIII. PRE-PETITION TAXES

64. As a matter of policy and practice, Round Table always timely pays the various state and federal taxes it incurs in the ordinary course of business. Round Table does not ordinarily pay taxes in advance, however. Attached hereto as Exhibit E is a schedule of taxes that accrued prior to the Petition Date but are payable after the Petition Date. I believe it would be appropriate to pay these taxes as they come due.

XIV. INSURANCE

65. Round Table maintains a variety of insurance coverage, identified in Exhibit F. Round Table's insurance policies are carefully selected to represent the most appropriate and cost effective insurance for its needs. Round Table does not believe that it would be beneficial to revisit the selection of its insurance post-petition, and seeks instead to retain its insurance coverage as intact.

66. In most cases, Round Table pre-pays for insurance coverage, and contemplates continuing to honor billings on its insurance policies in the ordinary course of its business.

67. In some cases, those policies are financed. Ordinarily, the financier enjoys the right to cancel the policy and retain the refund for non-payment. Round Table proposed to continue to honor the insurance finance contracts.

XV. CASH MANAGEMENT SYSTEM

68. In the ordinary course of business, Round Table maintains more than 100 accounts and sub-accounts into which deposits are made (the "Store Accounts"). The vast majority of the Store Accounts are used by the Company store to deposit daily revenue. The Store Accounts are "zero balance accounts;" the balance in each account is regularly swept to the master Concentration Account.

69. Round Table makes disbursements from the Concentration Account and payroll accounts. Ordinarily funds are transferred from the Concentration Account into the payroll account to cover checks as they are presented.

70. Round Table requests authority to maintain the Store Accounts unchanged. Since no money is held in the Store Accounts from day to day, the Debtor submits that there is no need for those accounts to be converted into “Debtor in Possession” accounts or otherwise modified.

71. As discussed above, I think it critical that Wells Fargo be authorized to maintain the Payroll Accounts intact and to authorize it to honor all checks drawn on those accounts, without regard to whether they were issued pre-petition or post-petition. Similarly, it is critical that a mechanism be established to permit Round Table promptly to effect disbursements on post-petition accounts payable.

XVI. LIMITING NOTICE

72. From time to time, Round Table engages in sales of its company-owned stores, when it can do so on favorable terms. As of the commencement of the bankruptcy case, there were three such sales in process. These sales represent a comparatively small portion of Round Table's assets, currently amounting to less than 5% of the company-owned stores.

73. Assuming that these sales are outside of the ordinary course of business, it would be unduly burdensome to give notice to all creditors of these sales. I think it would be appropriate to limit notice of such sales to the persons more directly and immediately involved with them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed February 9, 2011, at San Francisco, California.

/s/ J. Robert McCourt
J. Robert McCourt